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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 JOSEPH B. HAGER,

11 Petitioner,

12 vs.

13 GREG SMITH, *et al.*,

14 Respondents.  
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Case No. 3:14-cv-00490-RCJ-WGC

**ORDER**

19 On November 19, 2014, the court denied petitioner Joseph B. Hager's application to proceed  
20 *in forma pauperis* and directed him to pay the full filing fee of \$5.00 within thirty days (ECF #4).  
21 Petitioner was expressly advised that failure to do so may result in the dismissal of this action. More  
22 than the allotted time has passed, and petitioner has failed to pay the filing fee, seek an extension, or  
23 respond to the court's order in any manner.  
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1 It does not appear from the papers presented that a dismissal without prejudice will materially  
 2 affect a later analysis of any timeliness issue with regard to a promptly filed new action.<sup>1</sup> Accordingly,  
 3 the petition shall be dismissed without prejudice.

4 **IT IS THEREFORE ORDERED** that the Clerk shall file the petition (ECF #1-1).

5 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to the filing  
 6 of a new petition in a new action with either the full filing fee or a properly completed application form  
 7 to proceed *in forma pauperis* with the required financial documentation demonstrating that petitioner  
 8 is unable to pay the filing fee.

9 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of  
 10 reason would not find the court's dismissal of this improperly commenced action without prejudice to  
 11 be debatable or incorrect.

12 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an  
 13 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254  
 14 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he  
 15 submitted in this action.

16 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and  
 17 close this case.

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 19 DATED: This 20<sup>th</sup> day of January, 2015.

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 22 UNITED STATES DISTRICT JUDGE  
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24 <sup>1</sup>  
 25 With regard to timeliness, in this petition, petitioner states that he is challenging a judgment of conviction dated  
 26 November 21, 2012, and that the Nevada Supreme Court decided his appeal from the denial of his post-conviction petition  
 27 for relief or petition for writ of habeas corpus on July 22, 2014 (ECF #1-1). Thus it does not appear that a dismissal of the  
 28 present petition without prejudice will materially affect an analysis of any timeliness or exhaustion issue as to a promptly  
 filed later petition. Nor does it appear from the available records that a dismissal of this improperly commenced action  
 without prejudice necessarily will be with prejudice in effect. Petitioner at all times remains responsible for properly  
 exhausting his claims, for calculating the running of the federal limitation period as applied to his case, and for properly  
 commencing a timely-filed federal habeas action.